

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Murray Analyst: Darrine Distefano Bill Number: SB 1365
Related Bills: None Telephone: 845-6458 Introduced Date: 01-19-2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Personal Information Collection and Disclosure/Identity Theft Victim's Protection Act

SUMMARY

This bill would create the "Identity Theft Victim's Protection Act," which would make it a felony or misdemeanor to intentionally disclose personal information about a California resident to a third party for direct marketing purposes. Such illegal disclosure would be "identity theft."

EFFECTIVE DATE

This bill would become effective January 1, 2001. However, the bill would specify that certain provisions must be implemented by November 8, 2001.

BACKGROUND

Currently, the **Information Practices Act of 1977** requires state and local agencies to maintain in their records only that personal information relevant and necessary to its governmental purposes. The act also specifies that state and local agencies shall maintain the sources of their information; shall maintain only relevant, accurate and complete records; shall disclose personal information only under specific circumstances; shall maintain records regarding the disclosure of personal information; and shall allow individuals access to such information that pertains to them. Finally, the Information Practices Act establishes civil remedies for the enforcement of its provisions.

State law (Section 1798.3 of the Civil Code) defines "personal information" as any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. The definition also includes statements made by, or attributed to, the individual.

Currently, the **California Public Records Act** requires all state and local agencies to follow certain laws regarding public records, including making public records available for public inspection during office hours, except as exempted by law. If a state agency withholds any public record, it must demonstrate that 1) the record was exempt from disclosure or 2) the public interest for nondisclosure outweighs the public interest for disclosure.

The **Public Records Act** requires agencies to provide any reasonably identifiable public record or records promptly upon request, upon payment of fees covering direct costs of duplication, or upon payment of an applicable statutory fee.

Board Position:

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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

3/9/00

SPECIFIC FINDINGS

The **Revenue and Taxation Code** provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, shall be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose information only in limited circumstances and only to specific agencies as authorized by statute.

The **Revenue and Taxation Code** authorizes disclosure of confidential taxpayer information only in the following circumstances: in judicial or administrative proceedings in connection with the taxpayer's civil or criminal liability; to legislative committees; to the Attorney General for specific types of proceedings; to the State Controller for the purpose of locating the owners of unclaimed property; to the State Department of Social Services and the State Department of Health Services for the purpose of reporting unearned income; to the Student Aid Commission for the purpose of collection of student loans; to the Public Employees' Retirement System for the purpose of disbursing unclaimed benefits; and to the Parent Locator for the purpose of locating parents for child support collection. In addition, FTB has entered into a number of reciprocal agreements with the Internal Revenue Service (IRS) and other taxing authorities that allow the sharing of confidential taxpayer information for purposes of enforcing tax compliance. Unwarranted or unauthorized disclosure of income tax return information is a misdemeanor offense.

This bill would be known as the "Identity Theft Victim's Protection Act." The bill contains legislative intent language finding that the crime of illegally using personal information to make unauthorized transactions presents a grave threat to the health, safety, and economic welfare of all Californians.

This bill would make it a felony or misdemeanor to intentionally disclose personal information about a California resident to a third party for direct marketing purposes. Such illegal disclosure would be "identity theft."

This bill would define various terms, including "personal information," "victim of identity theft," "direct marketing purposes," and "disclose."

Under this bill, individuals who commit identity theft could be liable for a misdemeanor or felony crime, including a fine or a jail sentence or both.

Under this bill, any individual, entity, or government agency that discloses the personal information of a victim of identity theft could also be held liable for damages of \$5,000 for each violation.

This bill would establish procedures that individuals, entities, or governmental agencies in charge of personal information must follow when notified that identity theft has occurred.

Individuals or entities would not be allowed to condition the sale of goods, services, or other items of value on the requirement that a victim allow the disclosure of personal information to third parties for direct marketing purposes.

This bill would specify that in releasing public records, a government agency may not charge a fee that exceeds its direct cost of duplicating or transmitting the records.

Implementation Considerations

Under current department practice, personal information is collected by the department from various sources, including from the taxpayer and from agencies required to report financial information. This information is used for compliance development, audit, and collection. FTB does not use personal information or provide that information to third parties for any marketing purposes. As required by statute, all information received from the taxpayer is confidential and is shared with federal or state agencies only for specified purposes.

FTB has departmental policies and procedures regarding privacy and disclosure. All employees receive training about ensuring the confidentiality of taxpayer information and are given updated procedures on a regular basis. Any violation of these policies and procedures is subject to disciplinary action or can be punishable by law.

Therefore, implementing this bill would not affect the department's programs and operations.

Technical Considerations

The provision of this bill that prevents a government agency from charging a fee that exceeds its direct cost of duplicating or transmitting public records contradicts the Public Records Act. The Public Records Act allows a government agency to charge for the direct cost of duplicating the records or a statutory fee, if applicable.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

This bill would not impact the state's income tax revenues.

BOARD POSITION

Pending.